

**PLAINTIFFS' MOTION TO
CERTIFY CLASSES
REDACTED**

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLARK ET AL., individually and on behalf of
 all others similarly situated,

Plaintiff,

v.

YODLEE, INC., a Delaware corporation,

Defendant.

Civil Case No. 3:20-cv-05991-SK

**PLAINTIFFS' NOTICE OF MOTION
 AND MOTION TO CERTIFY CLASSES**

Hon. Sallie Kim
 Hearing Date: July 22, 2024
 Hearing Time: 9:00 a.m.
 Courtroom: C, 15th Floor

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NOTICE OF MOTION AND MOTION TO CERTIFY CLASSES

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 22, 2024 at 9:30 AM, or soon thereafter as available, in the courtroom of the Honorable Sallie Kim, located at 450 Golden Gate Avenue, Courtroom C, 15th Floor, San Francisco, California 94102, Plaintiffs will and hereby move the Court for an order certifying the following proposed classes:¹

Under Fed. R. Civ. P. 23(b)(3)		
Class	Class Representatives	Claims
<u>Nationwide Damages Class:</u> All natural persons in the United States who linked financial accounts to PayPal using Yodlee, Inc.'s ("Yodlee") Instant Account Verification ("IAV") service during the period of January 1, 2014 to August 24, 2020 (the "Class Period").	Plaintiffs John H. Cottrell, Kyla Rollier, Jenny Szeto. ²	(1) California common law invasion of privacy (intrusion upon seclusion); (2) unjust enrichment; (3) violation of California's Anti-Phishing Act of 2005 ("CAPA"); and (4) violation of Article I, Section I of the California Constitution.
<u>California Subclass:</u> All California residents who linked financial accounts to PayPal using Yodlee's IAV service during the Class Period.	Plaintiff Jenny Szeto.	(1) California common law invasion of privacy (intrusion upon seclusion); (2) unjust enrichment; (3) violation of CAPA; and (4) violation of Article I, Section I of the California Constitution.
Under Fed. R. Civ. P. 23(b)(2)		
Class	Class Representatives	Claims
<u>Injunctive Relief Class:</u> All natural persons in the United States who linked financial accounts to PayPal using Yodlee's IAV service during the Class Period.	Plaintiffs John H. Cottrell, Kyla Rollier, Jenny Szeto.	(1) California common law invasion of privacy (intrusion upon seclusion); and (2) violation of Article I, Section I of the California Constitution.
<u>California Subclass:</u> All California residents who linked financial accounts to PayPal using Yodlee's IAV	Plaintiff Jenny Szeto.	(1) California common law invasion of privacy (intrusion upon seclusion); and

¹ The term "Class Members" refers to members of both the Nationwide Damages Class and Injunctive Relief Class, as well as their respective sub classes.

² Plaintiffs Clark and Lumb are not being proposed as Class Representatives because, although they linked accounts to PayPal, those linkages occurred after the proposed Class Period.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	service during the Class Period.	(2) violation of Article I, Section I of the California Constitution.
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Common Questions and Issues to Be Decided

1. Whether Yodlee induced Class Members to provide their bank username and password (“Bank Credentials”), or other identifying information, by mimicking a bank login portal in violation of the CAPA;
2. Whether Yodlee disclosed that it would store, and indefinitely retain for its own commercial purposes, the Bank Credentials that Class Members entered when linking a bank account to PayPal through Yodlee’s Instant Account Verification (“IAV”) software;
3. Whether Yodlee disclosed that it would store, and indefinitely retain for its own commercial purposes, the bank data it collected when Class Members linked a bank account to PayPal through IAV;
4. Whether Yodlee violated objectively reasonable expectations of privacy by retaining Class Members’ Bank Credentials for its own commercial purposes indefinitely;
5. Whether Yodlee violated objectively reasonable expectations of privacy by retaining Class Members’ bank data for Yodlee’s own commercial purposes indefinitely;
6. Whether a reasonable person would find Yodlee’s storage and use of Class Members’ Bank Credentials and bank data highly offensive;
7. Whether Yodlee retained an unjust benefit from its storage and use of Class Members’ Bank Credentials and bank data;
8. Whether Plaintiffs have shown that the proposed Classes are so numerous that joinder is impractical, that their claims are typical of the Classes; their claims present at least one common question of law or fact classwide, and they will adequately represent the interests of the Classes if appointed as Class Representatives;
9. Whether Plaintiffs have shown that common questions of law or fact predominate over questions affecting only individual Class Members such that a class action is superior to other methods of adjudication; and
10. Whether Yodlee’s ongoing retention of Class Members’ Bank Credentials and bank data makes injunctive relief appropriate on a classwide basis.

1 **I. INTRODUCTION**

2 This case concerns one of the largest misappropriations of consumer banking data in history
 3 by one of the largest financial data brokers in the world, Yodlee. Yodlee collects consumer financial
 4 data through a software tool called IAV, which enables users to verify and link bank accounts to
 5 third-party apps. The IAV process works the same for each user; users are told to “log in” to their
 6 online bank accounts by entering their Bank Credentials into a screen that mimics a direct login
 7 portal to their bank’s website. In reality, the login portal is not connected to any bank but rather to
 8 Yodlee, which saves each user’s Bank Credentials, covertly logs-in to their online bank accounts,
 9 and collects and stores their highly sensitive financial data for Yodlee’s own commercial use.

10 Yodlee used this deceptive IAV process to collect and store banking data from roughly 44
 11 million PayPal users and 122 million bank accounts during the Class Period. PayPal users were
 12 never informed that by linking their bank accounts to PayPal, Yodlee would collect and retain their
 13 Bank Credentials and data for Yodlee’s own purposes. In fact, PayPal users were told the opposite:
 14 where Yodlee was mentioned, its role was described as merely helping “confirm your bank details”
 15 or “verify your bank” or “manage risk and fraud.” At no point were Class Members told that Yodlee
 16 would store and exploit their data after account verification.

17 Yodlee knew retaining PayPal users’ data was improper and lied to keep it a secret. Yodlee’s
 18 employees privately admitted it was not authorized to retain PayPal user data, calling it a
 19 “compliance risk,” “a huge concern,” a “contractual breach,” a “can of worms,” “extremely
 20 damaging” and a [REDACTED].” Yodlee thus took extraordinary
 21 steps to cover it up. Yodlee lied that it did not store PayPal data for longer than “24 hours” and
 22 falsely claimed PayPal users’ [REDACTED] Yodlee also
 23 forbid employees from discussing its data-storage externally, requiring all communications to be
 24 run through Yodlee’s management. When a mid-level employee proposed deleting PayPal user
 25 data, the Yodlee executive in charge of Yodlee’s data monetization refused, exclaiming, “Why
 26 would we do that!” Only after Plaintiffs filed this lawsuit in September 2020 did Yodlee begin
 27 deleting Class Members’ data in earnest. Plaintiffs’ expert, Dr. Serge Egelman, describes Yodlee’s
 28

retention and use of Class Members' data as "among the largest mishandlings of consumer banking data of which I am aware" across more than two decades of data-privacy scholarship.³

To ensure Class Members can seek redress, Plaintiffs seek to certify a Nationwide Damages Class under Federal Rule of Civil Procedure 23 (“Rule 23”) (b)(3) and a Nationwide Injunctive Relief Class under Rule 23(b)(2) consisting of all natural persons in the United States who linked financial accounts to PayPal using Yodlee’s IAV service during the period of January 1, 2014 to August 24, 2020. *Supra* at vi–vii . Plaintiffs also seek to certify corresponding California subclasses. *Id.* Plaintiffs’ privacy, phishing, and unjust enrichment claims each satisfy Rule 23(b)(3) because they target standardized data practices by Yodlee that can be proven through common proof and analysis. Plaintiffs’ injunctive claims similarly target Yodlee’s classwide data practices, like its ongoing retention and use of Class Members’ financial data. The Court should certify the Classes under Rule 23(b)(3) and (b)(2), appoint Plaintiffs as class representatives, and appoint Robins Kaplan, LLP and Lowey Dannenberg, P.C. as class counsel.

II. FACTUAL BACKGROUND

A. Yodlee and IAV

Yodlee is one of the largest financial data companies in the world.⁴ Yodlee's primary business is selling consumer financial data and products built upon it. Yodlee acquires consumers' data through data harvesting software like IAV, which it embeds in third-party apps like PayPal.⁵

³ Ex. 63, Serge Egelman Expert Report (“Egelman Report”) at 68.

⁴ See Ex. 1 at ‘0072111 (“Yodlee is arguably one of the largest, if not *the* largest financial data aggregators on the planet” and applies its “proprietary data intelligence technology to go beyond the obvious and get more out of aggregated financial data.”).

⁵ Ex. 70 at ‘0000723 (explaining

; Ex. 59, V. Raj Dep. Tr. at 29:10–12 (explaining the

1 The consumer data Yodlee collects is fed into its data aggregation platform,⁶ which fuels the data
 2 products and services Yodlee sells.⁷ Acquiring consumer financial data is thus “[t]he core to
 3 [Yodlee’s] business model.”⁸

4 Yodlee nonetheless conceals its data-acquisition strategy by marketing itself as a data-
 5 privacy steward. Yodlee’s public “[C]ommitment to Clients & Consumers” claims it “adheres to
 6 leading industry practices for data security, regulatory compliance, and privacy,” including
 7 principles published by the Consumer Financial Protection Bureau and the Center for Financial
 8 Services Innovation.⁹ Yodlee claims it does not collect, store, or use consumers’ financial data

14 ⁶ See Ex. 57, N. Nadkarni 30(b)(1) Dep. Tr. at 61:20-25 (“[REDACTED]

15 [REDACTED]; *id.* at 24:24-26:7 (explaining that [REDACTED]

16 [REDACTED] *id.* at 78:5-12 (explaining that [REDACTED]

17 [REDACTED] *id.* at 62:18–63:19 (testifying that [REDACTED]

18 [REDACTED]
 19 ⁷ *Id.* at 25:24-26:7 (explaining that [REDACTED]

20 [REDACTED] *id.* at 49:8-14 (explaining [REDACTED]

21 [REDACTED] *id.*
 22 at 78:13-16 (acknowledging that [REDACTED]) *id.* at 48:9-49:1 (testifying
 23 that [REDACTED]

24 [REDACTED] *id.* at 68:1-19 (testifying that [REDACTED]

25 ⁸ Ex. 2 at ‘0051164 (in an email about obtaining more data, stating “[t]he core to our business
 26 model is the ‘data’ element.”).

27 ⁹ Ex. 3 at ‘0001275; Yodlee, Envestnet | Yodlee’s commitment to its clients and to
 28 consumers, available at <https://www.yodlee.com/company/clients-consumers> (last accessed April
 10, 2024); Ex. 62, B. Buan Dep. Tr. at 106:21–107:4 (“[REDACTED]

1 unless consumers provide “explicit consent” based on “clear and conspicuous” disclosures.¹⁰
 2 Yodlee also claims to practice “data minimization;” *i.e.*, it purportedly collects “the minimum
 3 amount of data required” and stores data for “the minimum amount of time needed.”¹¹

4 Each of these claims are false. At no point during the Class Period did Yodlee obtain PayPal
 5 users’ consent to store and use their sensitive financial data after account verification. Indeed,
 6 Yodlee’s former executives [REDACTED]¹²

10 ¹⁰ Ex. 69 at ‘0556897–‘899 ([REDACTED])
 11 [REDACTED] Ex. 3 at
 12 ‘0001275 (claiming that Yodlee “support[s] and endorse[s]” “CFPB” and “CFSI Principles”); Ex.
 13 62, B. Buan Dep. Tr. at 105:6-106:4 (confirming that Yodlee [REDACTED]
 14 [REDACTED]); Ex. 90 at 3 (requiring “terms of access, storage, use and disposal [be] fully and
 15 effectively disclosed to the consumer” and “understood by the consumer[.]”); Ex. 91 at 6-7
 16 (recommending “[c]onsumers provide explicit consent for access to and use of their data” and
 17 have “[t]he ability to clearly view and revoke previously-permissioned data access[.]”); Ex. 89 at
 18 11 (“Banks, aggregators, and PFMs should also require explicit and informed consent for third
 19 party access to ensure that consumers understand and wish to authorize access to their account
 20 information.”); Ex. 69 at ‘0556856 (“[REDACTED]
 21 [REDACTED]”); Ex. 92 at 1 (“Consumers must provide affirmative consent on the
 22 basis of clear and conspicuous disclosure regarding the use of their data.”). Ex. 69 at ‘0556856
 23 (stating Yodlee adheres to the Secure Open Data Exchange (“SODA”) principles including
 24 “Consumers must provide affirmative consent based on clear and conspicuous disclosure
 25 regarding the use of their data.”); *id.* (Yodlee recognizes it “[m]ust agree to ask the consumer for
 26 clear and conspicuous consent to provide access to the data required to fuel the use case(s) they
 27 are providing, and use the data in a manner consistent with such consent.”).

21 ¹¹ Ex. 62, B. Buan Dep. Tr. 131:7-15 [REDACTED]
 22 [REDACTED] see Ex. 3
 23 (stating [REDACTED]
 24 [REDACTED]); Ex. 91 at 1 (“Minimization”
 25 occurs when “the minimum amount of data required for application functionality are collected,
 26 and the data are stored for the minimum amount of time needed).

25 ¹² See Ex. 61, B. Costello Dep. Tr. 238:16–19: (“[REDACTED]
 26 [REDACTED]
 27 [REDACTED]
 28 [REDACTED]

1 [REDACTED].¹³ As Yodlee’s executives put it, “if data is the
 2 ‘new oil’ . . . our crude oil is the consumer transaction data. *How do we get continued access to*
 3 *crude oil?*”¹⁴ Yodlee’s answer: through IAV and its other data-harvesting software.

4 On the surface, IAV allows consumers to link bank accounts to third-party apps so they can
 5 send or receive funds.¹⁵ To link accounts via IAV, each consumer is routed through a user interface
 6 designed by Yodlee that mimics the login portal of a bank website.¹⁶ Users are prompted to choose
 7 their bank, enter their Bank Credentials into the false login portal, and select the bank accounts they
 8 wish to link.¹⁷ Outside consumers’ view, Yodlee then uses their Bank Credentials to covertly collect
 9 sensitive financial data from their bank accounts, purportedly to verify account ownership.¹⁸ [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]

15 ¹³ See Ex. 57, N. Nadkarni 30(b)(1) Dep. Tr. at 122:1–16 (testifying [REDACTED]
 16 [REDACTED]); Ex. 58, P. Singh Dep. Tr. at 68:19–69:1 (testifying [REDACTED]
 17 [REDACTED]); *id.*
 18 at 69:2–11 (testifying that [REDACTED])

19 ¹⁴ Ex. 2 at ‘0051164.

20 ¹⁵ Ex. 45 at ‘0009020 (explaining [REDACTED]
 21 [REDACTED]
 22 [REDACTED]; Ex. 59, V. Raj Dep. Tr. at 40:3–7 (explaining [REDACTED]
 23 [REDACTED]).

24 ¹⁶ Ex. 74 ([REDACTED]); Ex. 77 at ‘0413676–681 (2016 “IAV Template ([REDACTED]
 25 [REDACTED]); Ex. 83 [REDACTED]; Ex. 82 at
 26 ‘0758785, ‘0758794, ‘0758799 (template Account-Linking Flow in effect in 2018); Ex. 73
 27 [REDACTED] Ex. 75
 28 at ‘0085577 ([REDACTED]; Ex. 81 (IAV flow for FastLink 2.0); Ex. 80
 [REDACTED]; Ex. 76
 [REDACTED]; Ex. 72 at slides 9–24
 (presentation from November 2019 providing updates on new releases to the template Account-
 Linking Flow).

¹⁷ Ex. 39 at ‘0366642–648 (account linking flow for PayPal from 2014); PP_00011850 (same for
 2016 through 2020); Ex. 68 (same); Ex. 40 (account linking flow for PayPal from 2018).

¹⁸ Ex. 54, Yodlee’s Second Supplemental Responses and Objections to Plaintiffs’ Interrogatories,
 Set One (Amended) at 5.

19

20

B. Yodlee's Collection of Plaintiffs' and Class Members' Data

Plaintiffs seek to certify two classes of PayPal users who linked bank accounts to PayPal using IAV between January 1, 2014 and August 24, 2020. *See supra* at vi–vii . PayPal is Yodlee's

.²¹ During the Class Period,

.²²

.²⁵

For each account linkage,

.²⁶

¹⁹ Ex. 46 at '0032046 ('

²⁰ Ex. 4 at '0378623 (stating

Ex. 5 at '0101992 (Yodlee's best practices

; Ex. 6 at '0756259 (same); Ex. 37 at '0087451 (same); Ex. 7 at '0107577 (same).

²¹ Ex. 8 at 0005164 ('

); Ex. 9 at '0388027 ('

²² Ex. 88, Supplemental Declaration of Gary Olsen, Schedule 17 – Revised

Plaintiffs are not attaching these voluminous data files as exhibits but will provide them upon the Court's request.

²³ Ex. 43 ('

²⁴ *Id.*

²⁵ *Id.*

²⁶ Ex. 87, Yodlee's Supplemental Responses to Plaintiffs' Interrogatories, Set Two at 7 (stating

1 Yodlee [REDACTED]

2 [REDACTED]²⁷ [REDACTED]

3 [REDACTED]²⁸ Yodlee [REDACTED]

4 [REDACTED]

5 [REDACTED]²⁹ Yodlee then [REDACTED]

6 [REDACTED]. *See infra* Section II.B–D.

7 Yodlee both failed to disclose these data practices to Class Members and took affirmative
8 steps to hide them. Yodlee [REDACTED]

9 [REDACTED]³¹ Yodlee thus devised two deceptive tactics to
10 bypass these hurdles and access Class Members' data without their consent.

11 First, throughout the Class Period, Yodlee made it appear as if Class Members were
12 providing their Bank Credentials directly to their bank, not to Yodlee.³² After selecting their bank,
13 Class Members were told they could link their accounts to PayPal by "logging into" their online
14 banking accounts through a purported bank login portal. As shown in Figures 1-3 below,³³ the login
15 portal was falsely described as "*your [bank name] login*" or a "*login to your online banking*" even
16 though it was actually a data collection tool for Yodlee that was not connected to, nor authorized

17

18 ²⁷ See Ex. 88, Supplemental Olsen Declaration at Schedule 17 [REDACTED]

19 [REDACTED].
²⁸ *Id.*

20 ²⁹ Ex. 56, Yodlee's Objections and Responses to Plaintiffs' Interrogatories, Set Three at 9 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 ³⁰ Ex. 6 at '0756259 ([REDACTED])

25 ³¹ Ex. 5 at '0101992 [REDACTED]

26 [REDACTED]

27 ³² Ex. 65, Nathan Good Expert Report ("Good Report") at 58–65; *see, e.g.*, Ex. 41 at '00011875;
Ex. 67 at '00011880; Ex. 40; Ex. 66 at '00011862.

28 ³³ *Id.*

by, any bank.³⁴

Figure 1

Figure 2

Figure 3

Yodlee also surrounded the false login portal with banks' names, along with logos or URLs, to reinforce the perception that users were connecting directly to their banks.³⁵ Yodlee hoped this would make users "feel more secure moving forward"³⁶

.³⁷ To make matters worse, Yodlee

.³⁸

Yodlee acquired Class Members' data by concealing its true data practices from them. Within the user interface, it was never disclosed that Yodlee collected and stored Class Members' Bank Credentials, nor that Yodlee stored and used Class Members' data indefinitely after their accounts were verified.

³⁴ See, e.g., Ex. 39 at '0366644; Ex. 47 at '00011853; Ex. 65, Good Report at 60.

³⁵ *Id.* at 60-62; see, e.g., Ex. 39 at '0366643; Ex. 71 at '0002508.

³⁶ Ex. 38 at '0026100

³⁷ Ex. 37 at '0087450 (Yodlee's

³⁸ Ex. 5 at '0101992

Outside the user interface, PayPal's terms and conditions and privacy policies similarly did not disclose that Yodlee would store and use Class Members' data after account verification. At most,

⁴² At no point were Class Members informed that Yodlee would store their Bank Credentials, nor that Yodlee would store and use their bank transaction data for its own purposes after verification. To the contrary, Class Members were told their data would *not* be stored. The user interface

.”⁴³

C. Yodlee's Storage of Class Members' Data

⁴⁴ Even then, Yodlee

³⁹ Ex. 60, J. Solomon Dep. Tr. 265:1–266:4 [REDACTED]; Ex. 11 at '0374307–309 (“Please look into this right away . . . it appears that in ML's IAV flow we have ‘Yodlee’ mentioned . . . Please look into and rectify immediately”).

⁴⁰ For that reason, [REDACTED] Ex. 6 at '0756260.

⁴¹ Ex. 12 at '00011848; Ex. 13 at '000118857; Ex. 14 at '00011865.

⁴² Ex. 15 at '00011876; Ex. 16 '00011878.

⁴³ Ex. 39 at '0366644; Ex. 40 (figure 4); Ex. 48 at '0022513.

⁴⁴ Ex. 55, Yodlee's Second Supplemental Responses to Plaintiffs' Interrogatories, Set Two at 4

⁴⁵ Ex. 64, Gary Olsen Expert Report (“Olsen Report”) at 22; *id.* at Schedule 17; *id.* at 32–33; *id.* at Schedule 24.

1 [REDACTED] .⁴⁶ Yodlee [REDACTED]

2 [REDACTED] .⁴⁷

3 Yodlee not only hid this data storage from Class Members; it also hid it from PayPal. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] .”⁴⁸ Yodlee’s [REDACTED]

7 [REDACTED] .⁴⁹ PayPal believed there [REDACTED]

8 [REDACTED] ” whereas [REDACTED]

9 [REDACTED] ⁵⁰ Yodlee [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 ⁴⁶ Yodlee only “soft-deleted” this data, meaning a copy was still stored on Yodlee’s systems. *See*
 15 Ex. 55, Yodlee’s Second Supplemental Responses to Plaintiffs’ Interrogatories (Set Two) at 4

16 [REDACTED]

17 [REDACTED] Ex. 85 at ‘0031301 (stating the [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 ⁴⁷ Ex. 64, Olsen Report at 32-33; *id.* Schedule 24.

21 ⁴⁸ Ex. 17 at ‘0001435. [REDACTED]

22 [REDACTED]

23 [REDACTED] *Id.* Section 5.1 states, [REDACTED]

24 [REDACTED] *Id.*

25 ⁴⁹ Ex. 49 at ‘0020470 (Yodlee email to PayPal in 2015 showing that Yodlee and PayPal
 26 specifically contemplated that “[a]t the end of the IAV flow, Yodlee will return the account data
 27 and the encrypted credentials to PayPal and delete credentials and data from Yodlee systems”);
 28 Ex. 28 at ‘00007306 (PayPal internal email in 2018 stating Yodlee was “the clear winner [on data
 security] since they do not store bank credentials”); Ex. 28 at ‘00007306 (PayPal’s internal email
 in 2018 stating Yodlee was “the clear winner [on data security] since they do not store bank
 credentials”).

⁵⁰ Ex. 18 at ‘00007325 ; *id.* at ‘00007324 (In comparing security between Yodlee and Yodlee’s
 competitor, Plaid, PayPal determined “Yodlee is the clear winner since they do not store bank
 credentials for PayPal.”).

Yodlee's management suppressed these concerns and lied to cover-up its secret data

⁵⁹ Ex. 19 at '0099803.

storage. Employees were told not to disclose Yodlee's data-storage externally⁶⁰ and to discuss it orally within Yodlee to avoid a written record.⁶¹ When Yodlee's IAV contract was up for renewal in 2016, PayPal asked Yodlee to confirm that its "data retention today is only 24 hours."⁶² After Yodlee falsely claimed it stored data for just "24 hours,"⁶³ [REDACTED]
[REDACTED].⁶⁴ In October 2018, PayPal again asked Yodlee [REDACTED]
[REDACTED].⁶⁵ In response, Yodlee [REDACTED]
[REDACTED]"⁶⁶ [REDACTED]
[REDACTED],⁶⁷ and bragged it had successfully "danced around" [REDACTED].⁶⁸
Consequently, PayPal [REDACTED]
[REDACTED]⁶⁹ While Yodlee claims [REDACTED]

⁶⁰ Ex. 20 at '0195973 ("Let's be careful about what we say to PayPal about this. (Whether we have / haven't been deleting)"); Ex. 19 at '0099803 ("Let's be clear on one thing . . . we have to be VERY careful about our messaging re: credentials. It was a PayPal InfoSec requirement that we did. The fact that we did not can be extremely damaging. I don't want anything going out without me seeing / approving it first"); Ex. 23 at '0065655 ("I haven't had any conversations with [PayPal] on [Yodlee not purging the data] so far as guided by YSO earlier"); Ex. 21 at '0081629 ("This is not the right time unfortunately to ask [PayPal] to implement purge API's as it will lead to escalation and opening up a can of worms which we should avoid.").

⁶¹ Ex. 20 at '0195973 (Yodlee employee urging others to "move [the discussion regarding not purging PayPal data] to a f2f or phone call interaction").

⁶² Ex. 24 at '0022108.

⁶³ *Id.* (stating that Yodlee would respond to PayPal that "[the data retention period] would be 24 hours.").

⁶⁴ Ex. 25 at '0001651 ([REDACTED]).

⁶⁵ Ex. 26 at '0063401 ([REDACTED]).

⁶⁶ Ex. 27 at '0063127 ([REDACTED])
[REDACTED].

⁶⁷ Ex. 51 at '0094606 [REDACTED]
[REDACTED]

[REDACTED]; Ex. 52 at '0003541 (Yodlee's internal email from October 2018 stating: "I don't think we are running [purging PayPal data]. Sometime back when we started having incidents because of these purging jobs and daily statistics, we had stopped all these daily jobs...."); Ex. 64, Olsen Report, Schedule 24.

⁶⁸ Ex. 27 at '0063127 (Vinay Raj telling Brian Buan, Yodlee's Senior Director of Client Partnerships, that he spoke with PayPal regarding "credential purging" and that he "basically . . . danced around it and told him . . . the credentials purging is an internal activity on our side which is a batch purge and we have it taken care of..."; Buan replies "ugh...nicely done!").

⁶⁹ Ex. 28 at '00007306.

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[REDACTED] .⁷⁰

D. Yodlee's Use of Class Members' Data

After collecting Class Members' data, Yodlee used it to drive revenue and fuel its commercial offerings. Because [REDACTED]

[REDACTED]

[REDACTED] ⁷¹ Yodlee also [REDACTED]

[REDACTED]

[REDACTED] .⁷² [REDACTED]

[REDACTED]

[REDACTED] .⁷³ Thus, [REDACTED]

[REDACTED]

[REDACTED] .⁷⁴

[REDACTED] valuable.⁷⁵ When a Yodlee

[REDACTED]

⁷⁰ Ex. 42 ([REDACTED]).

⁷¹ Ex. 53 at '0213051-052.

⁷² See Ex. 57, N. Nadkarni 30(b)(1) Dep. Tr. at 78:13-16 (acknowledging that [REDACTED]); *id.* at 14:7-24 (testifying that [REDACTED])

[REDACTED] *id.* at 48:6-49:14 ([REDACTED])

[REDACTED]

⁷³ See Ex. 57, N. Nadkarni 30(b)(1) Dep. Tr. at 48:6-49:14 ([REDACTED]); *id.* at 54:12-25 [REDACTED]

[REDACTED] *id.* at 78:13-16 (acknowledging that IAV data is "in the data warehouse"); *id.* at 61:5-11 ("

[REDACTED] *id.* at 61:12-25 ("

[REDACTED]

[REDACTED]

⁷⁴ Ex. 57, N. Nadkarni 30(b)(1) Dep. Tr. 110:6-9 (testifying [REDACTED]); Ex. 58, P. Singh Dep. Tr. 130:25-131:8 (testifying [REDACTED])

[REDACTED]; *id.* at 124:16-25 (explaining that [REDACTED])

[REDACTED]; *id.* at 32:16-17 [REDACTED]

⁷⁵ Ex. 84 at '0051809-810 [REDACTED]

employee proposed “purg[ing] the [PayPal] data due to contractual requirements” in 2016, the head of Yodlee’s data sales business, Nikhil Nadkarni, objected, exclaiming “Why would we agree to that!”⁷⁶ [REDACTED]

[REDACTED].⁷⁷

E. Yodlee’s Conduct Emanated from California

While Yodlee’s data harvesting affected Class Members nationwide, its conduct emanated overwhelmingly from California, where both Yodlee and PayPal were headquartered throughout the Class Period.⁷⁸ Yodlee’s [REDACTED]

[REDACTED].⁷⁹ Yodlee [REDACTED]

⁷⁶ Ex. 29 at ‘0071610 ([REDACTED]).

⁷⁷ Ex. 64, Olsen Report, Schedule 24 ([REDACTED]).

⁷⁸ See, e.g., Ex. 33 ([REDACTED]); Ex. 44 at ‘0000821 (showing that [REDACTED]); Ex. 86 at ‘0054653 ([REDACTED]).

⁷⁹ See, e.g., Ex. 31 at ‘0114258 ([REDACTED]); Ex. 58, P. Singh Dep. Tr. 27:7–11, 29:24–30:8 (explaining [REDACTED]); Ex. 32 at ‘0430990 (Yodlee’s “Info Sec team” is based in California); Ex. 79 at ‘0709647 [REDACTED]

Ex. 33 at ‘0300864 [REDACTED]

Ex. 34 at ‘0727397–398 [REDACTED] (explaining Yodlee’s [REDACTED] Ex. 35 at ‘0376077 ([REDACTED])

[REDACTED]; Ex. 30 at ‘0087651–652 [REDACTED]).

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III. ARGUMENT

A. Plaintiffs Satisfy the Rule 23(a) Requirements

Numerosity. Rule 23(a)(1) is satisfied when the “class is so numerous the joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The Classes here consist of tens of millions of individuals and thus easily satisfy numerosity.⁸² See *In re Static Random Access memory (SRAM) Antitrust Litig.*, 264 F.R.D. 603, 608 (N.D. Cal. 2009) (numerosity satisfied where “general knowledge and common sense indicate that [the class] is large.”) (internal citation omitted).

Commonality. Rule 23(a)(2) is satisfied when there are “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). All that is necessary is “one or more common questions.” *Brooks v. Thomson Reuters Corp.*, No. 21-CV-01418-EMC, 2023 WL 9316647, at *10 (N.D. Cal. Aug. 10, 2023).

As outlined above, *supra* Section II, Plaintiffs’ claims implicate numerous common questions, such as whether Class Members had a reasonable expectation of privacy in the common types of bank data Yodlee acquired, and whether Yodlee’s collection and retention of that data was highly offensive. These objective, class-wide questions satisfy Rule 23(a)(2), which is “construed permissively.” See *Parra v. Bashas’, Inc.*, 536 F.3d 975, 978 (9th Cir. 2008).

Typicality. Rule 23(a)(3) evaluates “whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (internal citation omitted). As described above, *supra* Section II, each Plaintiff, and all Class Members, had their financial data and Bank

⁸⁰ Ex. 36 at ‘0072953 (Yodlee’s invoice for PayPal IAV showing it is “Ship[p]ed To” PayPal’s office in “San Jose CA”).

⁸¹ Ex. 57, N. Nadkarni 30(b)(1) Dep. Tr. 14: 7–24 (testifying that [REDACTED]; Ex. 31 at ‘0114258 [REDACTED]; Ex. 58, P. Singh Dep. Tr. 27:7–11, 29:24–30:8 [REDACTED]).

⁸² Ex. 88, Supplemental Declaration of Gary Olsen ¶ 7.

1 Credentials collected by Yodlee and stored indefinitely after they entered their credentials into a
2 false login portal. Plaintiffs' claims are therefore typical of the Classes.

3 Adequacy. The adequacy requirement of Rule 23(a) demands that class representatives and
4 their counsel have no conflicts of interest with other Class Members and will vigorously prosecute
5 the litigation on behalf of the class. *West v. California Servs. Bureau, Inc.*, 323 F.R.D. 295, 306
6 (N.D. Cal. 2017) (citing *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003)). Plaintiffs have
7 no conflicts of interest, and both they and class counsel have vigorously pursued this action for the
8 last three years. They will adequately represent the Classes.

9 **B. Plaintiffs Satisfy the Rule 23(b)(3) Predominance Requirement**

10 Rule 23(b)(3) tests whether “the common, aggregation-enabling issues in the case are more
11 prevalent or important than the non-common, aggregation-defeating, individual issues.” *Olean*, 31
12 F.4th at 664 (citing *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016)). “When one or
13 more of the central issues in the action are common to the class and can be said to predominate, the
14 action may be considered proper under Rule 23(b)(3) even [if] . . . other important matters will have
15 to be tried separately[.]” *Id.* at 668. The predominance inquiry begins with the elements of each
16 claim, which are addressed below. *See Nitsch v. Dreamworks Animation SKG Inc.*, 315 F.R.D. 270,
17 288 (N.D. Cal. 2016).

18 **1. All Class Members Have Standing**

19 Article III standing requires Plaintiffs to show that they suffered an injury-in-fact that is
20 traceable to the conduct underlying their claims. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190,
21 2203-04 (2021). All Plaintiffs and Class Members have Article III standing because they suffered
22 a similar injury-in-fact when Yodlee invaded their privacy by collecting and storing their data. *Id.*
23 at 2204 (holding “intrusion upon seclusion” constitutes concrete injury-in-fact). Class Members
24 also have standing because they retain a “stake” in Yodlee’s “profits from [their] personal data,”
25 which “confer[s] Article III standing.” *In re Facebook, Inc. Internet Tracking*, 956 F.3d 589, 601
26 (9th Cir. 2020).

2. California Law Applies Classwide

Plaintiffs and Class Members' claims all arise under California law. Non-resident Class Members may assert claims under California law when "California has sufficiently significant contacts with the plaintiff's claims." *Opperman v. Path, Inc.*, 87 F. Supp. 3d 1018, 1040 (N.D. Cal. 2014); *Clay v. CytoSport, Inc.*, No. 3:15-CV-00165-L-AGS, 2018 WL 4283032, at *14 (S.D. Cal. Sept. 7, 2018) (evaluating whether "California has 'significant contact or significant aggregation of contacts' to the claims of each class member") (citing *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012)). This requirement is met here. Yodlee was headquartered in California throughout the Class Period. See *Pecover v. Elec. Arts Inc.*, No. C 08-2820 VRW, 2010 WL 8742757, at *19 (N.D. Cal. Dec. 21, 2010) (holding "defendant's [California] headquarters" supported certifying nationwide class based on California law); *Clay*, 2018 WL 4283032, at *14 (explaining being "incorporated and headquartered in California" supported applying California law to nationwide class). Additionally, the acts giving rise to Plaintiffs' and Class Members' claims occurred overwhelmingly in California, [REDACTED]

[REDACTED]. See Section II.E; see also *Bruno v. Quten Research Inst., LLC*, 280 F.R.D. 524, 540 (C.D. Cal. 2011) (applying California law to nationwide class where defendant was headquartered in California and sold products in California); *Opperman v. Path, Inc.*, No. 13-CV-00453-JST, 2016 WL 3844326, at *8 (N.D. Cal. July 15, 2016) (certifying nationwide class based on California law where product was "principally researched, designed or developed" in California); *Allen v. Hyland's Inc.*, 300 F.R.D. 643, 658 (C.D. Cal. 2014) 300 F.R.D. at 656 (certifying nationwide class based on California law where defendant's "[product] decisions occurred in California"); *Keilholtz v. Lennox Hearth Products, Inc.*, 268 F.R.D 330, 339-342 (N.D. Cal. Feb. 16, 2020) (certifying nationwide class based on California law where defendant "maintained a [partial] production connection to California"). Yodlee's substantial California contacts permit non-resident Class Members to seek relief under California law.

3. Common Issues Predominate for Plaintiffs' Privacy Claims

Plaintiffs' California privacy claims require them to show: (1) they possessed a "reasonable expectation of privacy," and (2) Yodlee violated that expectation in a way that was "highly offensive" to a reasonable person. ECF No. 266 at 16; *In re Facebook, Inc. Internet Tracking*, 956 F.3d at 601.⁸³ Both elements are evaluated under an objective standard that applies classwide and thus can be established using common evidence. *See Opperman v. Path, Inc.*, 2016 WL 3844326, at *11 (certifying nationwide class on California privacy claims because objective privacy tests "can be proven on a common basis" and "will not require individualized determinations of class members' subjective expectations"); *Rodriguez v. Google LLC*, No. 20-CV-04688-RS, 2024 WL 38302, at *6 (N.D. Cal. Jan. 3, 2024) (certifying nationwide class on California privacy claims because "the test under [plaintiffs'] . . . privacy claims is an objective one, capable of resolution class-wide").

Here, common evidence will show that Yodlee violated Class Members' reasonable expectation of privacy when it "obtained unwanted access to data' . . . in violation of the law or social norms." *See Opperman v. Path, Inc.*, 2016 WL 3844326, at *11. Specifically,

. . . . *See supra*

Section II.C. Yodlee also acquired Class Members' data through a common, deceptive tactic: mimicking a bank login portal. *See supra* Section II.B. The common application of these objective, reasonable-person standards will predominate over any purported variations in PayPal's terms, none of which disclosed Yodlee's data-storage and use. *See Rodriguez*, No. 20-CV-04688-RS, 2024 WL 38302, at *9 (holding "dozens [or] perhaps hundreds" of variations in third-party disclosures do "not overwhelm predominating questions as to [defendant's] privacy disclosures" and conduct).

The same common evidence will also show that Yodlee's conduct is highly offensive because Yodlee's deceptive tactics, like its storage and use of sensitive bank data without consent,

⁸³ Courts apply the same test to both common law privacy claims and privacy claims under Article I, Section 1 of the California Constitution. *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d at 601 .

violates common public policy. *See Opperman*, 2016 WL 3844326, at *11 (holding offensiveness is a “classwide” “‘policy’ determination” that “will not require individualized determinations”); *see also Brooks v. Thomson Reuters Corp.*, 2023 WL 9316647, at *9 (citing *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d at 606 (“Whether a challenged practice contravenes public policy inherently entails an aggregative judgement”))).

4. Common Issues Predominate for Plaintiffs’ CAPA Claim

Plaintiffs’ California Anti-Phishing Act (“CAPA”) claims similarly arise out of a standardized, classwide practice: Yodlee’s collection of identifying bank data through a fake bank-login portal. *See Ellsworth v. U.S. Bank, N.A.*, No. C 12-02506 LB, 2014 WL 2734953, at *20 (N.D. Cal. June 13, 2014) (certifying class where “standardized policies and practices applied on a routine basis to all customers”). CAPA prohibits inducing another person via the Internet to provide “identifying information by representing itself to be a business without [its] authority or approval.” Cal. Bus. & Prof. Code § 22948.2. “Identifying information” includes the banking data and Bank Credentials that Yodlee collected from Class Members. *See* Cal. Bus. & Prof. Code § 22948.1(b) (defining “Identifying information” to include “Account password[s],” “Bank Account Number[s]” and any other “information that can be used to access an individual’s financial accounts.”). Individuals “adversely affected” by a CAPA violation may recover statutory damages of “five thousand dollars (\$5,000) per violation.” *Id.* at § 22948.3.

Yodlee violated CAPA when it collected Class Members’ data by mimicking a direct login portal to their banks. The Court rejected Yodlee’s challenge to these allegations at summary judgment, holding that “a reasonable person could interpret the [false login portal], to be a direct link to their bank’s website,” and Plaintiffs were “adversely affected because their financial data was taken when Yodlee allegedly mimicked their banks’ websites.” ECF No. 266 at 17, 26. This same analysis applies to all Class Members. Like Plaintiffs, all Class Members had their identifying bank data taken by Yodlee after they entered their Bank Credentials into a false bank-login portal,

the core features of which were consistent for all Class Members.⁸⁴

Common questions thus predominate for Class Members' CAPA claims, including: (1) whether Yodlee obtained "identifying information" from Class Members; (2) whether Yodlee "represented itself" to be a bank by mimicking a bank-login portal; and (3) whether Class Members were adversely affected. These common questions predominate over any minor textual and graphical differences in the false login portal. *DZ Rsrv. v. Meta Platforms, Inc.*, 96 F.4th 1223, 1236–38 (9th Cir. 2024) ("[S]light variations in the other information available on the [user interface] do not defeat the commonality" or predominance).

5. Common Issues Predominate for Plaintiffs' Unjust Enrichment Claim

Unjust enrichment requires showing that the "defendant received and unjustly retained a benefit at the plaintiff's expense." *Brooks v. Thomson Reuters Corp.*, 2023 WL 9316647, at *13. Unjust enrichment is particularly well-suited for class certification because it typically only "require[s] common proof of the defendant's conduct and raise[s] the same legal issues for all class members." *In re JUUL Labs, Inc., Mktg. Sales Pracs. & Prod. Liab. Litig.*, 609 F. Supp. 3d 942, 997 (N.D. Cal. 2022).

Here, Class Members' unjust enrichment claims can be proven through the same common evidence: that Yodlee [REDACTED]

[REDACTED]. See *supra* Section II.D. Common issues thus predominate based on "the common inquiry of whether [Yodlee]'s uniform business practice of maintaining [data] unjustly resulted in . . . a financial benefit." See *Brooks*, 2023 WL 9316647, at *13 (certifying unjust enrichment class based on the defendant's use of class members' personal data).

6. Common Issues Predominate Regarding the Relief Plaintiffs Seek

Common evidence will also establish the monetary relief owed to Class Members. Rule

⁸⁴ All Class Members were shown the same core features of the false login portal: (1) a login screen with a space to enter a username and password; (2) prominent text describing the login portal as your "bank" login or a login "to your online banking"; and (3) bank names, symbols, and/or URLs surrounding the login portal. See Ex. 65, Good Report at 58-65, Attachment 3 (indexing images of the false login portal).

23(b)(3) requires that damages be “capable of measurement on a classwide basis.” *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1120 (9th Cir. 2017) (quoting *Comcast Corp. v. Behrend*, 569 U.S. 27, 34–35 (2013)). Nonetheless, damages calculations alone “cannot defeat certification.” *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 988 (9th Cir. 2015) (citing *Yokoyama v. Midland Nat. Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. 2010)).

Plaintiffs here seek five types of monetary relief on behalf of the Damages Class: compensatory privacy damages, nominal damages, statutory damages, punitive damages, and disgorgement. Each theory can be measured on a classwide basis.

Privacy Damages. Plaintiffs’ expert, Gary Olsen, offers a classwide methodology for measuring privacy damages based on the objective market value of the data Yodlee took from Class Members.⁸⁵ For bank transaction data, Olsen calculated what consumers are paid for similar transaction data on the open market across 15 rebate sites and receipt apps.⁸⁶ Olsen determined that consumers are paid an average of \$7.74 per month of transaction data from rebate sites and \$4.05 per month of transaction data from receipt apps. Olsen then applied these benchmarks to value the transaction data Yodlee collected from Class Members while adjusting for the number of transactions in their bank accounts. Olsen calculated that Yodlee collected \$224.9 million worth of transaction data from Class Members using the rebate-site benchmark, and \$117.7 million worth of transaction data using the receipt-app benchmark. This methodology can be used to calculate damages both classwide and for specific Class Members.⁸⁷

Olsen used a similar methodology to calculate damages resulting from Yodlee’s retention and use of Class Members’ Bank Credentials.⁸⁸ Because Bank Credentials are the means by which Yodlee obtains Class Members’ bank transaction data, Olsen estimated the value of Bank Credentials based on the amount of bank transaction data they would allow Yodlee to collect.⁸⁹

⁸⁵ See Ex. 64, Olsen Report at 30–38.

⁸⁶ *Id.* at 26–27, 29. Receipt apps allow users to share their purchase history in exchange for monetary compensation. Rebate sites similarly compensate individuals for sharing their purchase history.

⁸⁷ Ex. 64, Olsen Report at 35.

⁸⁸ *Id.* at 36–38.

⁸⁹ *Id.* at 37.

Using this approach, Olsen calculated damages of \$402.7 million using the rebate-site benchmark, and \$210.9 million using the receipt-app benchmark.⁹⁰

Judge Seeborg recently endorsed a similar market-based damages model in certifying a damages class in *Rodriguez v. Google LLC*, 2024 WL 38302, at *1. There, the plaintiffs' expert estimated damages from Google's unauthorized collection of third-party app data to be \$3 per device based on a monthly compensation program that paid participants \$3 each month for comparable data (there, browsing data). *Id.* Google argued the \$3 benchmark should be rejected because it was cherry-picked, overgeneralized, and based on a single source. *Id.* at *12. Judge Seeborg disagreed, crediting the expert's use of an objective benchmark based on "actual, baseline" payments for similar data. *Id.* (emphasis removed) Here, Olsen's model uses an even stronger market-based approach, averaging 15 sources of real-world payments (not just one) to value Class Members' data. Olsen's model provides a reliable methodology to measure damages on a classwide basis.

Nominal Damages. Plaintiffs also seek nominal damages for Yodlee's invasion of their privacy.⁹¹ Because nominal damages are evenly applied, they do not require any individualized inquiry. *See Opperman*, 2016 WL 3844326, at *15 (certifying privacy class based on nominal damages and collecting Ninth Circuit cases certifying nominal-damages classes). To facilitate a nominal damages award, Olsen has estimated there are [REDACTED]

[REDACTED].⁹²

Statutory Damages. The statutory damages Plaintiffs seek under CAPA are based on a common statutory award of \$5,000 that "disposes of any commonality [or] predominance concerns." *See PeopleConnect, Inc.*, No. 20-CV-09203-EMC, 2023 WL 9423286, at *21 (N.D. Cal. Dec. 14, 2023). Under CAPA, Plaintiffs may choose between "the greater of three times the amount of actual damages or five thousand dollars (\$5,000) per violation." Cal. Bus. & Prof. Code § 22948.3. This does not require proof of actual harm. *See Kang v. Credit Bureau Connection, Inc.*,

⁹⁰ *Id.* at 38.

⁹¹ *See* Ex. 64, Olsen Report at 40–42 ([REDACTED]).

⁹² Ex. 88, Supplemental Declaration of Gary Olsen ¶ 7.

No. 118CV01359AWISKO, 2022 WL 658105, at *6–7 (E.D. Cal. Mar. 4, 2022) (“[T]he Ninth Circuit has interpreted this [election of actual vs. statutory remedies] to mean that the consumer may recover statutory damages without demonstrating actual harm.”). Thus, classwide damages can be calculated formulaically by multiplying the statutory penalty by the number of violations proven at trial. *McMillion v. Rash Curtis & Assocs.*, No. 16-CV-03396-YGR, 2017 WL 3895764, at *5 (N.D. Cal. Sept. 6, 2017) (finding predominance where the statutory “damages calculation will depend only upon the number of [violations]” and potential trebling).

Punitive Damages. Punitive damages also may be awarded for Plaintiffs’ privacy claims. *See Jackson v. First Nat’l Bank of Omaha*, No. CV 20-1295 DSF (JCX), 2022 WL 423440, at *9 (C.D. Cal. Jan. 18, 2022) (“California courts and district courts in the Ninth Circuit have recognized punitive damages may be appropriate for common law invasion of privacy claims.”). Because punitive damages focus on the “the defendant’s conduct” rather than “facts unique to each class member” they are readily determined by common proof on a classwide basis. *See Ellis v. Costco Corp.*, 285 F.R.D. 492, 542-43 (N.D. Cal. 2012) (certifying Rule 23(b)(3) class for punitive damages). The same common proof underlying Class Members’ privacy claims support an award of punitive damages given the severity of Yodlee’s conduct. *See* Section III.B.3.

Disgorgement. California law “recognizes a right to disgorgement of profits resulting from unjust enrichment, even where an individual has not suffered a corresponding loss.” *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d at 600 (explaining disgorgement does not require plaintiffs to “expend his or her own financial resources” or lose property value). To obtain disgorgement, Plaintiffs and the Class must show that they retain “a stake in the profits garnered from their personal data and that it is unjust for the defendant to retain those profits.” *Rodriguez v. Google LLC*, 2024 WL 38302, at *11. Plaintiffs need only evidence “a reasonable approximation of the amount of the wrongful gain”; “the “[r]esidual risk of uncertainty in calculating net profit is assigned to the wrongdoer.” *Meister v. Mensinger*, 178 Cal. Rptr. 3d 604, 618 (Cal. App. 6th Dist. 2014) (internal citation and quotation marks omitted).

As described above, *supra* Section II, common evidence shows that Yodlee wrongfully

collected, stored, and used their Bank Credentials and transaction data for commercial purposes, [REDACTED] Olsen offers a common methodology for calculating disgorgement [REDACTED].⁹³ This methodology will also account for any evidence of costs or revenue adjustments that Yodlee chooses to submit in response.⁹⁴ These calculations do not require any individualized analysis because they focus on Yodlee's conduct. *See Brooks*, 2023 WL 9316647, at *13 (certifying class because "unjust enrichment theory can be determined on a class-wide basis" through expert's methodology "without delving into the specific facts surrounding any one individual class member"); *Rodriguez*, 2024 WL 38302, at *11 (accepting disgorgement model that "attribute[d] damages" to wrongful collection of data).

C. A Class Action Is the Superior Method of Adjudicating this Dispute.

Rule 23(b)(3)'s superiority requirement turns on "whether the ends of justice and efficiency are served by certification." *DZ Rsrv. v. Meta Platforms, Inc.*, No. 3:18-cv-04978-JD, 2022 WL 912890, at *9 (N.D. Cal. Mar. 29, 2022), *vacated in part on other grounds*, *DZ Rsrv. v. Meta Platforms, Inc.*, 96 F.4th 1223, 1241 (9th Cir. 2024). Superiority exists where the "'risks, small recovery, and relatively high costs of litigation' make it unlikely that plaintiffs would individually pursue their claims." *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1123 (9th Cir. 2017) (internal citation omitted); *see also DZ Rsrv.*, 2022 WL 912890 at *9 ("[I]t is not likely for class members to recover large amounts individually if they prevailed. No reasonable person is likely to pursue these claims on his or her own."). A class action is the superior method of adjudicating Class Members' claims because their individual damages would pale in comparison to the costs of litigating individual lawsuits.⁹⁵

The remaining Rule 23(b)(3) factors also support certification. There is no separate litigation involving Class Members' claims, concentration in Yodlee's home District is desirable, and managing this case as a class action is feasible given the "variety of procedural tools courts can

⁹³ See Ex. 64, Olsen Report at 42-44.

⁹⁴ *Id.*

⁹⁵ See *Id.* at 4-6 ([REDACTED]).

use to manage the administrative burdens of class litigation.” *See Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1131 (9th Cir. 2017).

D. The Requirements of Rule 23(b)(2) Are Satisfied

Plaintiffs also seek to certify an identical Injunctive Relief Class under Rule 23(b)(2). Rule 23(b)(2) is satisfied when “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). A Rule 23(b)(2) class does not require a showing of predominance or superiority. *See In re Yahoo Mail Litig.*, 308 F.R.D. 577, 598 (N.D. Cal. May 26, 2015); *Parsons v. Ryan*, 754 F.3d 657, 688 (9th Cir. 2014). Rather, an injunctive relief class may be certified so long as Class Members “complain of a pattern or practice that is generally applicable to the class as a whole.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010) (quoting *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998)).

Here, Plaintiffs seek injunctive relief to stop Yodlee’s retention and use of Class Members’ banking data, [REDACTED].⁹⁶ Courts have noted the importance of certifying injunctive classes that seek to enjoin widespread consumer-data violations like Yodlee’s. *See, e.g., Rodriguez*, No. 20-CV-04688-RS, 2024 WL 38302, at *10 (certifying injunctive relief class seeking to preclude Google’s collection and storage of consumer data). The Court should certify the Injunctive Relief Class here, “which seek[s] uniform relief from a practice applicable to all” by requiring Yodlee to permanently delete all copies of Class Members’ data from its systems. *See Ward v. United Airlines, Inc.*, No. 19-CV-03423-LB, 2021 WL 534364, at *7 (N.D. Cal. Feb. 12, 2021) (citation omitted).

⁹⁶ *See* Section II.D; *see also* Ex. 64, Good Report at 27–28 (explaining [REDACTED]); Ex. 57, N. Nadkarni 30(b)(1) Dep. Tr. 49:17–18 [REDACTED]; Ex. 53 at ‘0213051 (Yodlee’s internal emails in April 2020 showing that its employees can at any time request and receive access to “decrypted” PayPal data for its own use such as “data quality projects,” and the data would contain “account holder name, Email Id, Phone number & Address”); Ex. 64, Olsen Report, Schedule 24 ([REDACTED]).

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